

I am, therefore, of the opinion that there was no evidence before the learned Magistrate that the pin-tables, as such, were articles used in or for the purpose of gaming. They were, no doubt, articles which were capable of being kept or being used for gaming, but there was no positive evidence whatsoever that they were, in fact, being kept or used for gaming.

But I go further and say that even assuming they were, in fact, gaming instruments within the meaning of the Ordinance and, for that reason, the presumption had arisen that the premises were a common gaming house and that they were so kept or used by the occupier, that presumption was rebutted by the evidence of the prosecution itself. Both the witnesses called for the prosecution categorically stated that they were playing the game for amusement only. Whether or not their evidence on this matter was true is immaterial. It was the uncontradicted evidence adduced by the prosecution itself and, as such, it clearly rebutted any presumption that might have arisen under section 19 that the place was a common gaming house.

For these reasons I am clearly of the opinion, and I so hold, that this appeal must be allowed. The conviction is quashed; the fine of \$300 must be repaid to the appellant. The two pin-tables must also be returned to the appellant, together with the sums of \$76 and \$63.40 respectively found therein.

I would only add, in conclusion, that if those responsible for the preservation of law and order take such a serious view of the operation of pin-tables in the Settlement of Penang and Province Wellesley, then nothing, surely, can be simpler than for an application to be made to the Chief Secretary for him to declare, by notification published in the Gazette under section 2(2) of the Common Gaming Houses Ordinance, that such articles are "instrument or appliances for gaming" within the meaning of the Ordinance.

Appeal allowed.

Solicitors: Pillai, Lim, Lee & Hwang.

SULAIMAN v. CHOONG YOON CHONG

[O. C. J. (Smith J.) March 19, 1957]

[Seremban — Election Petition No. 1 of 1957]

Election — Town Council Elections (Town Council of Seremban) Regulations, 1953 — Election petition — Election Petition Rules, 1954.

In this case the respondent applied for the election petition to be dismissed (a) because no deposit of money by way of security for costs had been made as prescribed by the Election Petition Rules, 1954, and (b) because the remedy sought, that is an order for recount to discover whether any votes cast had not been counted, was not one which could be obtained by way of an election

petition. The deposit in this case had been made with the Registrar of the Supreme Court instead of with the proper officer.

Held: (1) the power to dismiss the petition if a deposit is not made is discretionary and in this case as there had been sufficient compliance with the spirit of the Regulations it would be inequitable to refuse the petitioner a hearing of his petition;

(2) if a statement of the poll after counting the ballot as required by Regulation 42 of the Town Council Elections (Town Council of Seremban) Regulations, 1953 had been published, it would have been possible to discover from the statement whether any votes cast had not been counted;

(3) in this case the statement of the poll after counting the ballot did not follow the prescribed form and therefore the application would be adjourned to allow the parties or either of them to take steps to secure the publication of the statement in the prescribed form.

ELECTION PETITION.

E. Joseph for the petitioner.

Respondent in person.

Smith J. : — Two applications made by the respondent are at present before the Court.

The first is that the petition should be dismissed because no deposit of money by way of security for costs has been made in the manner prescribed by the Election Petition Rules, 1954.

It will be convenient to set out in extenso Rules 12 and 13(1):—

"12. (1) At the time of the presentation of the petition, or within three days afterwards, security for the payment of all costs, charges, and expenses that may become payable by the petitioner shall be given on behalf of the petitioner.

(2) The security shall be to an amount of not less than five hundred dollars. If the number of charges in any petition shall exceed three, additional security to an amount of two hundred and fifty dollars shall be given in respect of each charge in excess of the first three. The security required by this Rule shall be given by a deposit of money.

(3) If security as in this Rule provided is not given by the petitioner, no further proceedings shall be had on the petition, and the respondent may apply to the Judge for an order directing the dismissal of the petition and for the payment of the respondent's costs. The costs of hearing and deciding such application shall be paid as ordered by the Judge, and in default of such order shall form part of the general costs of the petition.

13(1) The deposit of money by way of security for payment of costs, charges and expenses payable by the petitioner shall be made by payment to the proper officer which shall be vested in and drawn upon from time to time by the Chief Justice for the purposes for which security is required by these Rules. A receipt shall be given by the proper officer for the same, which shall forthwith be left at the office of the Registrar by the petitioner."

The facts are that a sufficient deposit was made by the petitioner within the time specified but the deposit was made with the Registrar of the Supreme Court and not with the "proper officer"; in this case the Supervisor of the Town Council Elections. The respondent argues that no deposit has been made and he applies for the petition to be dismissed.

Regulation 12(3) does not say that a petition shall automatically be dismissed if deposit is not made. It enjoins that no further proceedings shall be had on the petition and that the respondent may apply for the petition to be dismissed. The action which the Judge takes is entirely discretionary. In this case I am satisfied that sufficient security has been given and that there has been such sufficient compliance with the spirit of the Regulations that it would be inequitable to refuse the petitioner a hearing of his petition. This application is therefore refused.

The second application by the respondent was that the petition should be dismissed because the remedy sought was not one which can be obtained by way of an election petition. The relief sought by the petitioner is as follows:—

"An order for a recount so that the ballot papers and other documents relating to the said election may be inspected, copied or produced."

"And your petitioner says that on the 1st date of December, 1956, at 8.30 p.m. at the Anglo-Chinese School Hall, Seremban, when the votes were counted the said Choong Yoon Chong polled 529 votes, your petitioner 521 and rejected ballot papers were 11. The total number of ballot papers polled (including the rejected ballot papers) was accordingly 1,061.

When one of the two counting clerks, Andrew Edmonds, gave these figures orally, the Returning Officer, Megat Mahmud, stated that there was a difference of ten. Thereupon Stanley Ponniah, the counting agent for the said Choong Yoon Chong, explained that the difference would be accounted for by the rejected ballot papers. In the excitement of the moment, this explanation was accepted and no re-count was requested. The results were accordingly announced in the terms hereinbefore mentioned."

The substance of the prayer is that a scrutiny of the votes may reveal that ten votes were not counted and that those ten votes may affect the result of the poll.

If regulation 42 of the Town Council Elections (Town Council of Seremban) Regulations, 1953 (N.S. G.N. 263/53) has been complied with it should be possible to discover from the N.S. Gazette whether any votes cast have not been counted. That regulation reads as follows:—

"42. The returning officer shall forthwith after the result has been declared by him make a return in the Form 20 in the First Schedule hereto. He shall also compile a statement of the poll in the Form 21 in the First Schedule hereto and shall forward both such return and statement to the Supervisor, who shall cause the name or names of the Councillor or the Councillors so elected together with the said statement to be published in the Gazette."

The essential parts of Form 21 are as follows:—

"STATEMENT OF THE POLL AFTER COUNTING THE BALLOTS	
Electoral Ward of	
Number of ballot papers received from the returning officer ..	
Total number of ballot papers found in box	
Number of unused ballot papers undetached from the books ..	
Number of Spoiled ballot papers ..	
Total:	

Number of votes cast for	
" " " " "	
" " " " "	
" " " " "	
" " " " "	
Number of Rejected ballot papers	
Number of names on official list of electors used at the poll	
I hereby certify that the above statement is correct.	
Dated at this day of 19 ..	

.....
Returning Officer."

It would seem that if any votes have been lost there will be a discrepancy between the totals. I therefore turned to what appeared to be the publication of the result in the N.S. Gazette and found the following G.N. No. 655/56:—

"RAHANG WARD		Number of
Name of Candidate		Votes
CHOONG YOON CHONG alias AKIOW ..	..	529
SULAIMAN s/o SAIR ALI KHAN ..	..	521
Number of rejected ballot papers ..	..	11
Number of names on the register of electors used at the poll 1,498.		

I hereby certify that the above statement is correct.
Dated at Seremban, this 1st day of December, 1956.
(S.E.O.N.S. 21/56/19).

Returning Officer, Rahang Ward."

If Form 21 had been strictly followed it should have been possible for the petitioner to discover whether or not some of the votes had not been counted. There appears to me to be little point in proceeding with this petition at present if it is possible to secure the publication of Form 21 in its entirety. I shall therefore adjourn this application *sine die* to allow the parties or either of them to take steps to secure the publication of Form 21. There will therefore be no order at present on the second application which is adjourned *sine die* with liberty for either party to apply to restore to the list.

The question of costs on the first application I adjourned for consideration later when the costs of the second application are considered.

There is one further thing which I consider it my duty to do. The law relating to elections is extremely complex and is easy to omit some step the reason for which is not immediately apparent. The apparent reason for gazetting Form 21 in full is to ensure that the whole electorate in Seremban can see that all voting papers issued have been properly accounted for. The procedure on this point differs from that in Federal Elections (see the Legislative Council Election Regulation, 1954, Reg: 26(4) and reg: 29). In order that the experience of these proceedings may be available to election officials for their future guidance I order that the Registrar do send a copy of this judgment to the Honourable the Mentri Besar.

Order accordingly.

Solicitors: Joseph & Son.